

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ERNEST A. SWINSON,)	
)	
Plaintiff,)	
)	
v.)	No. 2:25-CV-04011-WJE
)	
DEPARTMENT OF LABOR,)	
)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Pending before the Court is Plaintiff Ernest A. Swinson's Motion for Leave to Appeal *in forma pauperis*. (Doc. 8). For the following reasons, the undersigned recommends that Mr. Swinson's motion be denied.

On January 23, 2025, Mr. Swinson, proceeding *pro se*, filed the instant case. (Doc. 1). On January 26, 2025, the Court found that while Mr. Swinson could not pay the filing fee, his Complaint failed to state a claim upon which relief could be granted. Therefore, his motion to proceed *in forma pauperis* was denied. (*See* Doc. 2).

On February 7, 2025, Mr. Swinson filed a notice of appeal and a request to proceed *in forma pauperis* on appeal. (Docs. 21, 22). "An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "An appeal is frivolous, and therefore cannot be taken in good faith, 'where it lacks an arguable basis in either law or in fact.'" *Maddox v. Chisago Cnty. Sheriff Office*, No. 10-CV-2133, 2010 WL 3119393, at *2 (D. Minn. Aug. 5, 2010) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). For the reasons set forth in this Court's Order dated January 26, 2025, this case presents issues which fail to state a claim upon which relief can be granted. Therefore, Mr. Swinson's appeal "lacks an arguable basis either in law or in fact," and cannot be taken in good faith. *Neitzke*, 490 U.S. at 325.

IT IS, THEREFORE, RECOMMENDED that the District Judge deny Plaintiff's Motion for Leave to Appeal *in forma pauperis*.

Dated this 9th day of February 2024, at Jefferson City, Missouri.

Willie J. Epps, Jr.

Willie J. Epps, Jr.
Chief United States Magistrate Judge